

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 \* \* \*

5 Donte Johnson,

6 Petitioner

7 v.

8 Timothy Filson, *et al.*,

9 Respondents

Case No. 2:18-cv-00740-JAD-NJK

**ORDER**

10  
11 Nevada prisoner Donte Johnson brings this petition for a writ of habeas corpus under 28  
12 U.S.C. § 2254 to challenge his conviction and death sentence for the 1998 deaths of four men.  
13 On April 23, 2018, Johnson filed a *pro se* habeas corpus petition,<sup>1</sup> along with an application for  
14 leave to proceed *in forma pauperis*<sup>2</sup> and a motion for appointment of counsel.<sup>3</sup> The Court  
15 promptly granted Johnson's motion for counsel and application for leave to proceed *in forma*  
16 *pauperis*, but did not waive the payment of the filing fee.<sup>4</sup> Johnson paid the filing fee on May  
17 21, 2018.<sup>5</sup> The Court appointed the Federal Public Defender for the District of Nevada (FPD) to  
18 represent Johnson, and ordered the FPD to file a notice of appearance as counsel for petitioner or  
19 a notice indicating its inability to represent petitioner in these proceedings. The Court also  
20 directed the Clerk of the Court to serve Johnson's petition and ordered respondents to appear;  
21 they did so on May 2, 2018.<sup>6</sup>

22 <sup>1</sup> ECF No. 2.

23 <sup>2</sup> ECF No. 1.

24 <sup>3</sup> ECF No. 4.

25 <sup>4</sup> See Order entered April 26, 2018 (ECF No. 5).

26 <sup>5</sup> ECF No. 7.

27 <sup>6</sup> ECF No. 6.

1 On May 23, 2018, the FPD filed a Notice of Conditional Acceptance of Appointment as  
2 Counsel for Petitioner and Disclosure of Conflict.<sup>7</sup> In that filing, the FPD disclosed that it has a  
3 potential conflict with respect to the representation of Johnson—a paralegal in the Capital  
4 Habeas Unit of the FPD, Katrina Davidson, formerly worked as a legal assistant for the attorney  
5 who represented Johnson at his 2000 trial. The FPD notified the Court that Johnson wishes to be  
6 represented by the FPD in this federal habeas corpus action, and Johnson has executed a waiver  
7 of the conflict.<sup>8</sup> The FPD describes the measures it has taken to ameliorate the effects of the  
8 conflict, and the FPD has filed a copy of a memorandum regarding those measures.<sup>9</sup> The Court  
9 has examined the notice, the memorandum, and Johnson’s waiver, and **the Court now accepts**  
10 **the waiver.**

11 Accordingly, **the Court now sets this schedule** for proceedings under Federal Rule of  
12 Civil Procedure 16(b), the Rules Governing Section 2254 Cases in the United States District  
13 Courts, and Local Rule 16-1:

14 1. Amended Petition. If necessary, petitioner will file and serve an amended petition  
15 for a writ of habeas corpus within 60 days after the entry of this order. In it, he must specifically  
16 state whether each ground for relief has been exhausted in state court; for each claim that has  
17 been exhausted in state court, the amended petition must state how, when, and where that  
18 occurred. If petitioner determines that an amended petition does not need to be filed, then,  
19 within the time for the filing of an amended petition, petitioner must instead file and serve a  
20 statement to that effect.

21 2. Response to Petition. Respondents will have 60 days after service of the amended  
22 petition to file and serve an answer or other response to the amended petition. If petitioner does  
23

---

24 <sup>7</sup> ECF No. 8.

25 <sup>8</sup> See Notice of Conditional Acceptance of Appointment as Counsel for Petitioner and Disclosure  
26 of Conflict (ECF No. 8); Declaration of Donte Johnson (ECF No. 8-1).

27 <sup>9</sup> See Notice of Conditional Acceptance of Appointment as Counsel for Petitioner and Disclosure  
28 of Conflict (ECF No. 8); Memorandum (ECF No. 8-2).

1 not file an amended petition, respondents will have 60 days following the due-date for the  
2 amended petition to file and serve an answer or other response to the original petition.

3 3. Reply and Response to Reply. Petitioner will have 45 days after service of an  
4 answer to file and serve a reply. Respondents will then have 30 days following service of a reply  
5 to file and serve a response to the reply.

6 4. Briefing of Motion to Dismiss. If respondents file a motion to dismiss, petitioner  
7 will have 30 days after service of the motion to file and serve an opposition to the motion.  
8 Respondents will then have 30 days after service of the opposition to file and serve a reply.


9 5. Discovery. If petitioner wishes to move for leave to conduct discovery, he must  
10 file and serve such a motion concurrently with, but separate from, the response to respondents'  
11 motion to dismiss or the reply to respondents' answer. If he files a motion for leave to conduct  
12 discovery before that time, it may be considered premature and denied without prejudice on that  
13 basis. Respondents will file and serve a response to any such motion concurrently with, but  
14 separate from, their reply in support of their motion to dismiss or their response to petitioner's  
15 reply. Petitioner will then have 20 days to file and serve a reply in support of the motion for  
16 leave to conduct discovery. If the Court grants leave, the Court will then establish time limits for  
17 the completion of the authorized discovery.

18 6. Evidentiary Hearing. If petitioner wishes to request an evidentiary hearing, he  
19 must file and serve a motion for an evidentiary hearing concurrently with, but separate from, the  
20 response to respondents' motion to dismiss or the reply to respondents' answer. Any such  
21 motion filed by petitioner before that time may be considered premature and denied without  
22 prejudice on that basis. The motion for an evidentiary hearing must specifically address why an  
23 evidentiary hearing is required and meet the requirements of 28 U.S.C. § 2254(e). The motion  
24 must state whether an evidentiary hearing was held in state court, and, if so, state where the  
25 transcript is located in the record. If petitioner files such a motion, respondents will file and  
26 serve a response to that motion concurrently with, but separate from, their reply in support of  
27 their motion to dismiss or their response to petitioner's reply. Thereafter, petitioner will have 20  
28 days to file and serve a reply in support of the motion.

1           7.     Status Reports and Status Conferences. The Court may from time to time, as the  
2 need arises, schedule status conferences, and/or require the filing and service of status reports, in  
3 order to manage the progress of this action.

4           **IT IS SO ORDERED.**

5  
6 Dated: June 11, 2018

7   
8 \_\_\_\_\_  
9 U.S. District Judge Jennifer A. Dorsey  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28